

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of David Arthur Kuen et al. Art Unit 3761
Serial No. 10/736,069
Filed December 15, 2003
Confirmation No. 4276
For ABSORBENT GARMENT AND METHOD FOR PLACING AN ABSORBENT
GARMENT ON A WEARER'S WAIST
Examiner Melanie Jo Hand

April 14, 2008

REPLY BRIEF

This is a reply to the Examiner's Answer mailed February 28, 2008. Appellants' reply is being filed to respond to the Examiner's Response to Argument set forth on pages 8-10 of the Examiner's Answer.

In its Response to Argument, the Office asserts a position that is clearly an improper extension of the teachings of Rosch et al. in that nowhere do Rosch et al. teach or even suggest an alternative embodiment having a refastenable connection between an end of the absorbent assembly and a cover. The passage of Rosch et al. cited by the Office (i.e., col. 16, lines 58-67) in supports of its position provides the following.

The foregoing detailed description has been for the purpose of illustration. Thus, a number of modifications and changes may be made without departing from the spirit and scope of the present invention. For instance, alternative or optional features described as part of one embodiment can be used to yield another embodiment. Additionally, only one rather than both ends of the waste containment structure can be elastically connected to the cover. Therefore, the invention should not be limited by

the specific embodiments described, but only by the claims. (Emphasis added.)

In view of this disclosure, the Office asserts that Rosch et al. therefore teach an alternative embodiment wherein "one end of the absorbent assembly is releasably and refastenably connected, as the only alternative to a non-refastenably connected end is a refastenably connected end (which is inherently and necessarily also releasably connected)". See page 8 of the Examiner's Answer.

Appellants contend, however, that the more appropriate reading of this passage when considering Rosch et al. in its entirety is that the alternative embodiment being described in the cited passage can have one end of the waste containment structure permanently connected to the cover while the other end of the waste containment structure is unconnected to the cover. That is, one end of the waste containment structure is free of any attachments whatsoever to the covers because the other end is still permanently connected. As mentioned in Appellant's Appeal Brief, Rosch et al. disclose two different embodiments of their invention: one wherein the trunk garment (cover) and pants (absorbent assembly) are permanently secured together, and a second wherein the trunk garment and pants are entirely independent of each other (i.e., having no connection therebetween whatsoever). Nowhere do Rosch et al. teach or even suggest that the trunk garment and the pants can be releasably and refastenably connected as asserted by the Office.

Accordingly, the Office's assertion that both ends of the waste containment structure of Rosch et al. must be connected

to the cover is an impermissible extension of the teachings therein.

With respect to Christoffel and as asserted in Appellants' Appeal Brief, each embodiment illustrated and described in Christoffel et al. disclose a swimsuit comprising a chassis that is permanently (i.e., non-refastenably) secured to a bodice to form the one-piece swimsuit. This includes the embodiment illustrated in Fig. 20 thereof. Specifically, Christoffel et al. state that a pant-like absorbent product (98) of a chassis (22) of Fig. 20 "is attached" to a bodice (42). See paragraph [0072] of Christoffel et al.

The Office asserts that this attachment between the bodice and chassis can be accomplished using attachment means "known in the art" including hook and loop fasteners. See page 9 of the Examiner's Answer. However, this position is inconsistent with the teachings of Christoffel et al. Christoffel et al. discloses at paragraph [0074] that the chassis and bodice can be attached together using "attachment means known to those skilled in the art such as adhesive, thermal or ultrasonic bonding." See paragraph [0074] of Christoffel et al. Each of these attachment means is permanent (i.e., not releasable).

Hook and loop fasteners, on the other hand, are not permanent and instead are releasable in that they can be repeatedly fastened and unfastened. Christoffel et al. further recognizes the use of hook and loop fasteners as being nonpermanent means of fastening components together (see paragraph [0073] of Christoffel et al.) but they fail to include these or any other type of nonpermanent fasteners (i.e., buttons, snaps) as suitable "attachment means" for the bodice and the chassis.

Thus, the Office's assertion that it would have been obvious to replace the permanent attachment means disclosed by Christoffel et al. for attaching the bodice and chassis with an nonpermanent attachment means, such as hook and loop fasteners, is an improper extension of the Christoffel et al.

In addition, the Examiner provides no sustainable motivation or suggestion as to why one of ordinary skill in the art would be motivated to releasably and refastenably attach a garment shell to a waist belt as recited in claims 1 and 36. The Office asserts that one of ordinary skill in the art would be motivated to combine the teachings of Rosch et al., Christoffel et al., and New et al. to provide a more comfortable and discreet fit for the user. See pages 4 and 10 of the Examiner's Answer. However, this rationale (which is gleaned from New et al.) applies only to why one of ordinary skill in the art would be motivated to releasably and refastenably attach an absorbent assembly (not a garment shell) to a waist belt. The comfort and discreetness of the garment shell is unaffected by its attachment to the waist belt.

The Office further asserts that releasably and refastenably attaching the garment shell to the waist belt provides "easy access to the absorbent assembly." See page 10 of the Examiner's Answer. However, Rosch et al. disclose the use of a garment shell without any type of attachment. Clearly, an unattached garment shell would provide greater ease in accessing the absorbent assembly than one that was attached. Thus, why would one of ordinary skill in the art be motivated to releasably and refastenably attaching the garment shell to the waist belt which would making taking the garment shell off more difficult? Accordingly, the Office has

provided no sustainable rational as to why one of ordinary skill in the art would be motivated to releasably and refastenably attach a garment shell to a waist belt.

For these additional reasons, claims 1 and 36 and the claims depending therefrom are submitted to be patentable over Rosch et al., Christoffel et al., and New et al.

Conclusion

In addition to the reasons set forth in the appellants' Appeal Brief, the rejections of the claims on appeal are submitted to be in error for the reasons set forth above.

Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 12-384.

Respectfully submitted,

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